

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MONTICELLO ENTERPRISES LLC,
Plaintiff

-VS-

MACY'S, INC., MACY'S RETAIL
HOLDINGS, LLC, MACYS.COM, LLC,
BLUEMERCURY, INC.,
Defendants

W-23-CV-00753-XR
LEAD CASE

MONTICELLO ENTERPRISES LLC,
Plaintiff

-VS-

PETCO HEALTH & WELLNESS
COMPANY, INC., PETCO ANIMALS
SUPPLY STORES, INC.,
Defendants

W-23-CV-00761-XR

MONTICELLO ENTERPRISES LLC,
Plaintiff

-VS-

STARBUCKS CORPORATION,
Defendant

W-23-CV-00763-XR

ORDER ADOPTING REPORT AND RECOMMENDATION

On this date the Court considered United States Magistrate Judge Derek T. Gilliland's Report and Recommendation concerning Defendants' Motions to Dismiss. ECF Nos. 41, 42, & 43. Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and Rules 1(d) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas,

Magistrate Judge Gilliland issued his report and recommendation on December 4, 2025. ECF No. 62.

The Magistrate Judge considered three Motions to Dismiss under Rule 12(b)(6). Defendant Petco filed the first motion and stated its legal basis for dismissal. ECF No. 41. Defendants Macy and Starbucks filed motions that adopted and incorporated by reference Defendant Petco's Motion and arguments. ECF Nos. 42 & 43. The Motions to Dismiss seek dismissal of Plaintiff's Complaint alleging all six patents asserted by Plaintiff claim ineligible subject matter under 35 U.S.C. § 101.

Any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file his or her written objections within fourteen days after being served with a copy of the findings and recommendations. 28 U.S.C. § 636(b)(1). The Magistrate Judge's report and recommendation was electronically transmitted to the parties on December 4, 2024. ECF No. 63. No objections have been filed.

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.").

The Court has reviewed the Report and Recommendation and finds it to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having done so and finding no clear error, the Court accepts and adopts the report and recommendation as its own order.

Accordingly, it is **ORDERED** that the Report and Recommendation of Magistrate Judge Gilliland (ECF No. 62) is **ADOPTED**. Defendants' Motions to Dismiss (ECF Nos. 41, 42, & 43) are **DENIED** without prejudice to raising the issue at the summary judgment stage of the case.

See Marble VOIP Partners, LLC v. Zoom Video Commc'ns, 670 F. Supp. 3d 1213, 1231 (D. Kan. 2023) (denying a motion to dismiss without deciding whether the claims are patent eligible).

It is so **ORDERED**.

SIGNED this 21st day of January, 2025.

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal stroke and a small flourish.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE